

EXHIBIT 5

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)
. Chapter 11
W.R. GRACE, et al., .
. Bankruptcy Courtroom No. 2
. 824 Market Street
Debtors. . Wilmington, Delaware 19801
. .
. September 25, 2006
. 2:03 P.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 THE COURT: Well, it --

2 MR. BERNICK: I'll stipulate they'll collide.

3 THE COURT: All right, we're off this -- we are off
4 the subject. And I apologize. I don't know how I led us down
5 that path. We're off the subject.

6 The point was that this is for estimation purposes,
7 not for allowance and disallowance purposes. So, I don't
8 expect to see something like I'm not going to tell you that my
9 client also worked for U.S.G. because it's work product. Un-
10 un't. If your client worked for U.S.G., that's a fact. So,
11 put it in there.

12 MR. BERNICK: Your Honor, on the objections, counsel
13 pointed out -- just to get us back on track. Your Honor said
14 you want to know the objections within the 30-day
15 supplementation period.

16 Counsel then responded, well, a lot of those -- a lot
17 of objections have already been made. And it is true that when
18 people submitted responses to our motion to compel, the kind of
19 global motion to compel, they stated a bunch of objections to
20 the questionnaire. And some of them, as like lawyers do, maybe
21 are obliged to do, is I object to this, this, and this and
22 this.

23 Your Honor now has provided additional elucidation,
24 particularly with regard to the issue of relevance. And I
25 think that it's only fair if there are objections that Your

1 Honor has not heard and has not ruled on, they ought to be set
2 forth within this period of time.

3 We shouldn't have --

4 THE COURT: That's what I said.

5 MR. BERNICK: Well, but -- I think what was being
6 suggested was to the extent that people previously have lodged
7 objections, a lot of them are very kind of general, that that
8 might suffice.

9 And all that I'm saying is now that Your Honor
10 already has taken a cut of this, we ought to -- I know there
11 are going to be lots of groans. But we ought to get some
12 process for people to identify any matter as to which there's
13 going to be an objection that Your Honor has not ruled on.

14 THE COURT: I --

15 MR. BERNICK: It's not the purpose of --

16 THE COURT: I haven't ruled on any individual
17 claimant's objections. None. They haven't been teed up before
18 me.

19 If they've been stated in a previous document, and
20 there's some supplement, I -- perhaps this order should say
21 that prior objections go away. And if you're going to file a
22 supplement, restate it. Because --

23 MR. BERNICK: But --

24 THE COURT: Because otherwise there is no way to know
25 what the supplementary information is intended to do. So, it

1 seems to me if you file a supplement and you want to raise an
2 objection to a specific question, rather than supplementing, it
3 should be raised.

4 I don't know how else we're ever going to get to the
5 end of this.

6 MR. FINCH: Your Honor, unless it's been previously
7 raised. I mean this is discovery aimed at people. When you
8 get a -- whether it's a questionnaire or a set of document
9 requests, or interrogatories, you state on the -- you can
10 answer it, you can object to part of it, you can object to all
11 of it. But they -- they have the questionnaire responses.
12 Some people in their questionnaire responses have objections to
13 various things. If they --

14 THE COURT: And if they've objected to a specific
15 question, and they don't supplement that question, then that
16 objection that's already on the record will suffice.

17 But if there is a supplement submitted, the debtor
18 can't possibly know whether the objection is withdrawn or not
19 withdrawn. So, they have to restate the objection. You have
20 to. Otherwise --

21 MR. FINCH: I -- I --

22 THE COURT: -- the process can't work.

23 MR. FINCH: I misunderstood Your Honor. I thought
24 that Your Honor was saying that all objections were --

25 THE COURT: No.

1 MR. FINCH: -- as if they had never been made.

2 THE COURT: No.

3 MR. FINCH: And as long as objections already
4 previously made are preserved, as long as people don't
5 supplement --

6 THE COURT: Right.

7 MR. FINCH: -- or if they do supplement, they restate
8 the objections --

9 THE COURT: Yes.

10 MR. FINCH: -- then I -- then I don't have a problem
11 with that.

12 MR. BERNICK: Yeah, well -- let's just --

13 THE COURT: Mr. Bernick, that's my ruling.

14 MR. BERNICK: Well, I understand --

15 THE COURT: I'm not going to hear any more argument
16 on it, not from anybody.

17 MR. BERNICK: Your --

18 THE COURT: I've had this questionnaire until the
19 cows come home and, frankly, that's enough.

20 MR. BERNICK: I don't even understand, Your Honor,
21 what was just said.

22 THE COURT: What was just said is this: Let's assume
23 that person A completed a questionnaire.

24 MR. BERNICK: Right.

25 THE COURT: And filed an objection on the

1 questionnaire to Question 3.

2 MR. BERNICK: Right.

3 THE COURT: All right. If the person supplements and
4 doesn't submit a supplement to Question 3, they don't need to
5 restate the objection. The objection stands.

6 If they file a supplement to Question 3, then -- if
7 they intend to have a new objection, they have to raise it.
8 Because otherwise, the debtor can't possibly know whether the
9 objection's been done away with because of the supplement or
10 whether there is still some objection.

11 So, if someone files a supplement, they have to
12 restate their objections.

13 If they don't file a supplement, their objections
14 stand.

15 MR. BERNICK: What you will then get, Your Honor --
16 because that basically says that what you've just said about
17 relevance doesn't matter, they don't have to file it, it wasn't
18 -- it wasn't specific to a question, we will -- we will find
19 out --

20 THE COURT: I didn't understand?

21 MR. BERNICK: Very simple. Your Honor, we believe,
22 has ruled that these questions are relevant.

23 THE COURT: In the global sense, yes.

24 MR. BERNICK: In the global sense.

25 THE COURT: Yes.

1 MR. BERNICK: If you allow them, that is the
2 claimants, to basically stand on prior objections on the
3 grounds that they are now specific objections and they haven't
4 been ruled on, and there is then no indication to us that they
5 are so doing, then the first time we will find out that they're
6 standing on those objections and basically saying we don't
7 think that your global determination is dispositive with
8 respect to us is when we finally get the supplementation. That
9 will be our first notice that they really haven't done anything
10 new at all, that Your Honor's determination with respect to
11 relevance, the guidance, hasn't caused them to change a thing
12 and we're now -- however far we are down the process, and we
13 haven't made any progress whatsoever.

14 THE COURT: You --

15 MR. BERNICK: The -- the --

16 THE COURT: You can't be more than 30 days down the
17 process because they have to raise all objections in 30 days.

18 MR. BERNICK: No. No, no. What they're saying --
19 what they just told you was that if they are not supplementing
20 --

21 THE COURT: Right.

22 MR. BERNICK: -- then they don't have to do anything
23 new. So, they will take all the objections that they made
24 previously --

25 THE COURT: Okay.

1 MR. BERNICK: -- before Your Honor gave guidance.
2 They will stand on those objections.

3 THE COURT: All right.

4 MR. BERNICK: They will not supplement. They will
5 not tell us whether or not they're going to supplement as to
6 those individual questions. And we will find out when they
7 finally give their submission at the end of the day for the
8 first time that, in fact, they're standing on their old
9 objections and they haven't changed anything. And for that
10 matter, they haven't even supplemented anything.

11 THE COURT: Well --

12 MR. BERNICK: But -- but I think that there's a much
13 simpler --

14 THE COURT: I will never do this again.

15 MR. BERNICK: Yes.

16 THE COURT: This was such a nightmare. I will never
17 do this again.

18 MR. BERNICK: Well, but, Your Honor, there's only --
19 just think what the alternative was.

20 THE COURT: The alternative would have been a whole
21 lot easier. We put everybody in a room and throw the key away
22 until you come out with one side either alive or dead.

23 MR. BERNICK: You have -- well, they're older than I
24 am, so we may have killed them in the process. But --

25 MR. LOCKWOOD: Your Honor -- Your Honor said you've